

Applicant : Miller et al.
Appl. No. : 10/595602
Examiner : Brian T Gedeon
Docket No. : 13634.4009

Remarks/Arguments

Claims 29—32 have been allowed.

Claims 11—14, 16 and 21 were indicated to be allowable. Claims 11—14 have been re-written as new claims 33—36, 37 and 38 with claims 33, 35, 37 and 38 being written in independent form including all of the limitations of the base and intervening claims to claims 11 and 13, 16 and 21.

Claims 13—14 and 31—32 have been rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement for the reasons set forth in paragraph 5 of the Office Action. First, the specification clearly describes and illustrates a warp fiber. Specifically, the specification states:

[0016] In another form, the wrap has warp fibres at, near, or along its sides that are more elastic than the warp fibres at, near, or along its centre. In this form, the warp fibres, near or along its sides are preferably crimped and the warp fibres at, near, or along its centre are preferably un-crimped or less crimped.

[0035] A second embodiment of wrap 40 is shown in FIG. 5. In this embodiment, the wrap 40 according to the invention is again of woven polyester construction with longitudinal warp fibres 42 and lateral weft fibres 44. In the wrap 40, the warp fibres 46 adjacent the sides of the wrap 40 are made crimped which makes them more elastic or stretchable than the un-crimped warp fibres 48 in the centre of the wrap 40.

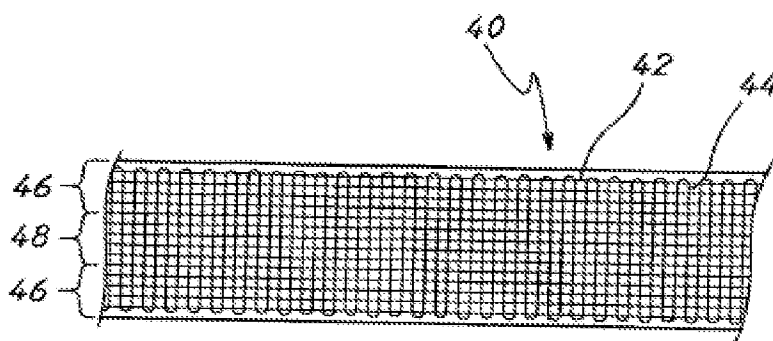


FIG. 5

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Second, the specification and claims are directed to those skilled in the art and a person skilled. As is well known in the textile art, all woven materials comprise

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longitudinally extending fibres called warp fibres (because they extend between the warp beams in the loom used for the weaving) and transverse fibres called weft fibres. It is submitted that this description adequately supports the claims objected to by the examiner when taken with common knowledge in the textile art. Accordingly, reconsideration and withdrawal of the examiner's written description rejections are requested.

Claims 1—3, 13—15 and 18 have been rejected as unpatentable over Winston, US Patent 5,607,378. The wrap of Winston is designed for application around a limb externally of the patient's body. The teaching is specifically towards the constriction of muscles not blood vessels. The examiner is correct that there will necessarily be blood vessels within the limb however there is no suggestion or teaching that the cuff of Winston would be applicable directly to a blood vessel within the body of a patient. Furthermore the examiner suggests that the cited specification teaches that the edges of the wrap should be less compressive than the centre section. It is submitted that there is no such teaching whatsoever. The reason for this is that a wrap applied externally around a limb does not give rise to the issue of abrasion of a blood vessel that arises in the present case with regard to a wrap about the blood vessel internal to a patient's body. The external wrap has skin, muscle and other tissues between the wrap and the internal blood vessels which itself provides strain relief. It is therefore suggested that the examiner's assertion that the specification of Winston teaches towards the claimed invention is unfounded. The only reason that the examiner finds this teaching in Winston is because of the teaching of the present invention, which is an improper use of hindsight to reject the claims as unpatentable over Winston. In view of the examiner's reliance on Winston and similar art, Applicant has amended claim 3 to more clearly distinguish the claim over external limb type wrap art. Specifically, claim 3 has been amended indicate the wrap is secured directly to a vessel within the patient's body, i.e., claim 3 reads in pertinent part: "A wrap for securing directly about a blood vessel within a patient's body ..." Accordingly, Winston does not establish a prima facie case of obviousness with regard to claims 1—3, 13—15 and 18.

Claims 4—8, 23 and 27—28 have been rejected as unpatentable over Winston in

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view of Cohen US Patent 3,467,077. Like Winston, the wrap in Cohen is designed for application around a limb externally of the patient's body. Accordingly, Cohen does not cure the deficiencies of Winston noted above and, thus, Winston in view of Cohen does not establish a prima facie case of obviousness with regard to claims 4—8, 23 and 27—28.

Claims 10, 17, 22 and 24—27 have been rejected as unpatentable over Winston in view of Gilles et al. US Pub. No. 2006/0052866. Although Gilles describes an elastic membrane that is wrapped around a vessel to treat a stiffened blood vessel, Gilles provides no disclosure or suggestion that the side edge portions of the membrane exert or could exert a lower compressive force than the central portion of the membrane. As depicted in Figure 4, the Gilles membrane causes the same problems that the claimed invention solves or avoids. Accordingly, Winston in view of Gilles does not establish a prima facie case of obviousness with regard to claims 10, 17, 22 and 24—27.

Claims 20 have been rejected as unpatentable over Winston in view of Cohen and further in view of Sano US Patent 3,467,077. Similarly to Winston and Cohen, the wrap in Sano is designed for application around a figure externally of the patient's body. Accordingly, Sano does not cure the deficiencies of Winston and Cohen noted above and, thus, Winston in view of Cohen and further in view of Sano does not establish a prima facie case of obviousness with regard to claim 20.

Prompt and favorable action on the merits of the claims is earnestly solicited. Should the Examiner have any questions or comments, the undersigned can be reached at (949) 567-6700.

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The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,
ORRICK, HERRINGTON & SUTCLIFFE LLP

/Kenneth S. Roberts/

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By: _____
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